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**UNITED STATES DISTRICT COURT**  
**EASTERN OF WASHINGTON**  
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8 J. MITCH HALL and NATHAN  
9 KAY, on behalf of themselves and  
similarly situated individuals,

10 Plaintiffs,

11 v.

12 L-3 COMMUNICATIONS  
13 CORPORATION, L-3  
14 COMMUNICATIONS VERTEX  
15 AEROSPACE, LLC and L-3  
16 COMMUNICATIONS  
INTEGRATED SYSTEMS L.P.,

Defendants.

NO. 2:15-cv-231-SAB

THIRD AMENDED COMPLAINT  
AND DEMAND FOR TRIAL BY  
JURY

EXEMPT FROM FILING FEES  
UNDER 38 U.S.C. § 4323(h)(1)

17  
18 Plaintiffs Joseph Mitch Hall and Nathan Kay (collectively “Named  
19 Plaintiffs”), through their attorneys, and on behalf of Nathan Kay and other  
20 similarly situated National Guard and Reserve members who applied to work as  
21 pilots at Defendants L-3 Communications Corp., L-3 Communications Vertex  
22 Aerospace, LLC, and/or L-3 Communications Integrated Systems L.P.  
23

24 THIRD AMENDED COMPLAINT - 1  
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Second Floor West  
Washington, DC 20001

(collectively, “Defendants” or “L-3”), but were denied initial employment due to  
1 their status or service in the National Guard or Reserves in violation of the  
2 Uniformed Services Employment and Reemployment Rights Act of 1994  
3 (“USERRA”), and/or the Washington Law Against Discrimination (“WLAD”),  
4 and allege:

## INTRODUCTION

1.1 This is an action brought pursuant to USERRA, 38 U.S.C. § 4301 *et seq.*,  
9 and the Washington Law Against Discrimination (“WLAD”), on behalf of a class  
10 of National Guard and Reserve members who applied to work as pilots at L-3,  
11 but were denied employment because of their membership or service in the  
12 National Guard or Reserves.

1.2 L-3 is one of the ten largest defense contractors in the United States, and is  
15 a prime contractor in intelligence, surveillance, and reconnaissance systems,  
16 aircraft sustainment, simulation and training, and detection systems. L-3’s  
17 customers include the Department of Defense, U.S. Government intelligence  
18 agencies, the Department of Homeland Security, foreign governments, and  
19 domestic and international commercial customers. In 2015, L-3 earned \$10.466  
20 billion in sales, including \$6.973 billion in Department of Defense contracts and  
21 \$7.291 billion in U.S. government contracts overall. At the end of 2015, L-3  
22

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1 employed about 38,000 full-time and part-time employees, 86% of which were in  
2 the United States.

3 1.3 In this action, Plaintiffs Hall and Kay allege that they and other members of  
4 the Proposed Class were subjected to and injured by the same pattern, practice or  
5 policy of L-3 preferring to hire non-lateral pilot applicants who *are not* current or  
6 active National Guard or Reserve members over non-lateral pilot applicants who  
7 *are* current or active National Guard or Reserve members.

8 1.4 Plaintiffs allege that L-3's pattern, practice, or policy violates USERRA's  
9 anti-discrimination provisions, 38 U.S.C. § 4311, with respect to all members of  
10 the Proposed Class, and violates the Washington Law Against Discrimination,  
11 RCW 49.60.180, with respect to members of the Proposed Class who sought work  
12 from or in the State of Washington. Plaintiffs seek an injunction barring L-3 from  
13 continuing to engage in this unlawful pattern, practice, or policy that is harming  
14 National Guard and Reserve members, and Plaintiffs seek compensation for the  
15 National Guard and Reserve members who have been denied employment,  
16 earnings, and benefits as a result of such unlawful conduct.

1                   **II. PARTIES AND JURISDICTION**

2       2.1 Plaintiff JOSEPH “MITCH” HALL (“Mr. Hall”) resided in Spokane,  
3 Washington during all times relevant to this case.

4       2.2 Plaintiff NATHAN KAY (“Mr. Kay”) resided in Spokane, Washington  
5 during all times relevant to this case.

6       2.3 Defendant, L-3 COMMUNICATIONS CORPORATION (“L-3/CC”) is a  
7 Delaware corporation that is licensed to conduct business in this district, maintains  
8 a Washington State Uniform Business Identifier 601800495 and Washington State  
9 Tax Identification Number (same), maintains a Washington State Reseller Permit  
10 Number A05 9973 17, maintains a business location at 621 W. Malon Street,  
11 Spokane, WA 99201. Upon information and belief L-3/CC transacts business  
12 within this District from that address, owns, uses or possesses personal property at  
13 that address, serves the state’s markets, contracts to insure property and risk at that  
14 address, and is registered to do business in Washington State and has designated  
15 CT Corporation in Olympia, Washington as its registered agent with the Secretary  
16 of State. L-3/CC had control of the employment opportunities of Mr. Hall and  
17 Mr. Kay, through its agents, and is a “private employer” as defined by 38 U.S.C. §  
18 4303(4) and 38 U.S.C. § 4323(a), (b), (c), and (h).

2.4 L-3/CC is the parent company of Defendants L-3 COMMUNICATIONS  
VERTEX AEROSPACE (“L-3 VERTEX”) and L-3 COMMUNICATIONS  
INTEGRATED SYSTEMS (“L-3/CIS”).

2.5 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS shares a common management, interrelation between operations, centralized control of labor relations, and common ownership.

## 2.6 L-3 VERTEX is a business unit or “division” within L-3/CIS

2.7 Defendant L-3 VERTEX is a Delaware corporation that is licensed to conduct business in this District, has employees (including Mr. Hall) who reside in this District, maintains a Washington State Uniform Business Identifier 602140626 and Washington State Tax Identification Number (same), maintains a Washington State Reseller Permit Number A08 089317, maintains a place of business located on Fairchild Air Force Base, a military installation located within this district. Upon information and belief, L-3 VERTEX transacts business within this District from that address, leases space from the United States at that address, contracts with the United States from that address, owns, uses or possesses personal property at that address, serves the state's markets, contracts to insure property or risk at that address, is registered to do business in Washington State and has designated CT Corporation in Olympia, Washington as its registered

1 agent with the Secretary of State. L-3 VERTEX had control of the employment  
2 opportunities of Mr. Hall, through its agents, and was a primary decision maker  
3 regarding Defendants' violation of both Named Plaintiffs' rights and is a "private  
4 employer" as defined by 38 U.S.C. § 4303(4) and 38 U.S.C. § 4323(a), (b), and  
5 (c).  
6

7 2.8 Defendant L-3/CIS is a Delaware Limited Liability Partnership, has  
8 employees (including Mr. Hall) who reside in this District, maintains a business  
9 unit located on Fairchild Air Force Base, within this District, had control of the  
10 employment opportunities of both Named Plaintiffs, through its agents, and was a  
11 primary decision maker regarding Defendants' violation of both Named Plaintiffs'  
12 rights and is a "private employer" as defined by 38 U.S.C. § 4303(4) and 38  
13 U.S.C. § 4323(a), (b), and (c).  
14  
15

16 2.9 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS maintains continuous  
17 and systematic interaction in Washington State.  
18  
19

20 2.10 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS and its agents, had  
21 knowledge that Mr. Hall and Mr. Kay were residents of Washington State (and  
22 this District) during the time frame relevant to this case.  
23  
24

1       2.11 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS and its agents  
2 intentionally directed conduct towards the Named Plaintiffs here in Washington  
3 State, knowing that its conduct would cause harm to the Named Plaintiffs.

4       2.12 Each Defendant, L-3/CC, L-3 VERTEX and L-3/CIS and its agents  
5 executed agreements, and exchanged employment, pay, retirement, leave and tax  
6 reporting information and documents with Mr. Hall in this state and District  
7 through a secure (not passive) server and internet connection accessed by Mr. Hall  
8 via password, with permission and credentials provided for by Defendants for  
9 those purposes, and paid Mr. Hall for work that Defendants directed him to  
10 performed in Washington State and in this district including travel and  
11 reimbursements.

12       2.13 Hereinafter, unless specified otherwise, Defendants are identified  
13 collectively as “L-3”.

14       2.14 The U.S. District Court for Eastern District of Washington has subject  
15 matter jurisdiction over this matter pursuant to 38 U.S.C. § 4323(b)(3), and 28  
16 U.S.C. § 1331.

17       2.15 This Court has supplemental jurisdiction over Mr. Kay’s state law claims  
18 pursuant to 28 U.S.C. § 1367, as his state law claims are so related to his federal  
19 claims in this action such that they form the same case or controversy.

20       THIRD AMENDED COMPLAINT - 7

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1 2.16 This Court has personal jurisdiction over Defendants because the claims  
2 and causes of action in this action arise from or are connected with its extensive  
3 business activities in Washington State.

2.17 Venue is proper in this District under 38 U.S.C. § 4323(c)(2), because the  
5 Defendants maintain places of business in this District, as well as under 28 U.S.C.  
6 1391(b)(2), because a substantial part of the events or omissions giving rise to  
7 Plaintiffs' claims occurred in this District.  
8

### III. FACTS

11 | 3.1 Plaintiffs incorporate the above paragraphs.

(Mitch Hall)

13       3.2 Mr. Hall is a veteran of the U.S. Air Force and Washington Air National  
14       Guard.

16 3.3 Mr. Hall currently serves in the Washington Air National Guard and did so  
17 at all times relevant to this action.

18       3.4 During early 2013, Mr. Hall, while residing in the State of Washington,  
19 applied for employment with J-3

21 3.5 During the May 2013 timeframe, Chris Root (L-3 Chief Pilot) telephoned  
22 Mr. Hall at Mr. Hall's Washington residence, requested additional employment

1 information, and conducted Mr. Hall's employment interview. During the pre-  
2 employment process, Hall was listed as "recently separated veteran."

3 3.6 Approximately one week later, Mr. Root telephoned Mr. Hall at Mr. Hall's  
4 Washington residence, and offered Mr. Hall employment.

5 3.7 Thereafter, L-3 sent emails to Mr. Hall, while Mr. Hall was in Washington,  
6 containing hiring paperwork. Mr. Hall, while in Washington, completed the  
7 paperwork and returned it to L-3.

8 3.8 L-3 VERTEX hired Mr. Hall in July 2013 to work as a pilot in L-3's S4  
9 Program. Upon information and belief, Mr. Hall is concurrently, and or at times,  
10 alternately employed by L-3/CIS, although his supervisors and reporting structure  
11 remained the same throughout the relevant periods as identified in this amended  
12 complaint.

13 3.9 On July 15, 2013, L-3 delivered an Alternative Dispute Resolution  
14 agreement with L-3/CIS and Mr. Hall, at his home residence. Mr. Hall executed  
15 that agreement and submitted it to L-3 through its secure web site. The agreement  
16 states that it "does not cover USERRA claims."

17 3.10 In August 2013, L-3 required Mr. Hall to obtain a U.S. Passport for his  
18 employment. L-3 directed Mr. Hall to obtain a passport, and paid him for that  
19 work he performed in Washington State.

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1       3.11 The L-3 S4 Program provides contract aviation support of U.S. Government  
2 operations in Afghanistan.

3 3.12 Playing roles in Mr. Hall's employment with L-3 were Kathy Holland, the  
4 L-3 S4 Program's "Chief Scheduler"; Mark Barreault and Dave Akers, individuals  
5 who formerly (Barreault) and currently (Akers) serve as the S-4 Program's  
6 "Program Manager"; Chris Root, the S4 Program's "Chief Pilot"; Alan  
7 Campbell, one of the S4 Program's two "Lead Pilots"; and Randall Gladney, the  
8 S4 Program's "Site Lead."

11 3.13 As the Chief Pilot, Mr. Root hires people into the S4 Program and works  
12 with Kathy Holland in that capacity.

13 3.14 As a Lead Pilot, Mr. Campbell is in charge of day-to-day scheduling with  
14 regard to the S4 Program's operations in Afghanistan. Lead Pilots report to the  
15 Chief Pilot and the Chief Pilot reports to the Program Manager.  
16

17 3.15 Pilots employed with the S4 program rotate from their homes of record  
18 (Spokane, in Mr. Hall's case) to Afghanistan to perform their duties as  
19 government aviation contractors and, when their tours (which span one to three  
20 months) end, they rotate home and take leave until their next tours begin.  
21

1       3.16 At times, however, the U.S. Armed Services activates individuals, like Mr.  
2 Hall, for military duty which, in turn, makes it more difficult for L-3 to schedule  
3 pilots for its overseas rotations.

4       3.17 Because military reserve activations sometimes cause L-3 S4 Program  
5 managers difficulty in scheduling, those managers openly exhibit hostility towards  
6 employees who are current or active members of the National Guard or Reserve.

7       3.18 During a September 2012 L-3 new pilot orientation session in Greenville,  
8 Texas, Mr. Berrault asked L-3 employee Justin Bridges-Crawford (a newly hired  
9 L-3 pilot who previously served in the U.S. Air Force) whether he (Crawford) was  
10 in the military reserves. When Mr. Bridges-Crawford replied “no” Mr. Berrault  
11 said “reservists are always trying to get over and get out of work.”

12       3.19 In August 2013, during Mr. Hall’s L-3 new pilot orientation session, Mr.  
13 Hall informed Ms. Holland, L-3 S4 Program’s “Chief Scheduler,” that Hall had a  
14 military reserve obligation with the Air National Guard. In response Ms. Holland  
15 angrily remarked “you’re one of those Guard guys who gets to go home whenever  
16 he wants.”

17       3.20 Ms. Holland, in retaliation for Mr. Hall informing her of his military  
18 commitment, delayed Mr. Hall’s processing into the L-3 program which, in turn,  
19 caused Mr. Hall to lose pay and benefits.

1       3.21 By way of comparison, upon information and belief, the other seven non-  
2 military reserve pilots in Mr. Hall's new employee orientation class were allowed  
3 to wait for their rotation to begin *while* collecting pay whereas Mr. Hall *was not*  
4 afforded pay while he waited for his rotation to begin.  
5

6       3.22 During 2013, Mr. Hall's Air National Guard service did not affect Mr.  
7 Hall's L-3 schedule, as he was able to perform military duty during times when he  
8 was not working Afghanistan as an employee of L-3.  
9

10      3.23 During 2014, however, Mr. Hall's military service affected his work  
11 schedule.  
12

13      3.24 In about January 2014, L-3 VERTEX sent a 2013 Tax Form W-2 to Mr.  
14 Hall at his Spokane, Washington area residence.  
15

16      3.25 On or about October 10, 2014, Mr. Hall informed L-3 of upcoming  
17 (December 2014 – January 2015) military duty.  
18

19      3.26 Mr. Hall's military orders for the above timeframe began on or about  
20 December 6, 2014 and ran through January 31, 2015.  
21

22      3.27 Mr. Hall served honorably in the military from approximately December 6,  
23 2016 to January 31, 2016.  
24

1       3.28 On or about December 22, 2014, Mr. Hall texted Mr. Root, requested re-  
2 employment, and informed Mr. Root that he (Hall) would be able to be on-site on  
3 February 5, 2015 and perform his duties as a L-3 pilot.

4       3.29 On January 2, 2015, Mr. Hall emailed Ms. Holland and requested to return  
5 to work on February 5, 2015. In that email request, Mr. Hall informed Ms.  
6 Holland that his Air National Guard unit had been overwhelmed by non-forecast  
7 deployments.

8       3.30 On January 6, 2015, Ms. Holland informed Mr. Hall, via email, that L-3  
9 was “very short on pilots” in January – February 2015 and stated L-3 needed Mr.  
10 Hall “on site next week.”

11      3.31 On January 6, 2015, Mr. Hall informed Ms. Holland, via email, that his  
12 military orders would not end until January 31, 2015.

13      3.32 On January 15, 2015, Mr. Hall again requested re-employment and, that  
14 same day, Ms. Holland informed Mr. Hall, via email, that she was “waiting PM  
15 approval on a 30 day rotation” and stated she did not “have any manning needs for  
16 the month of March so I can’t send you out there for 60 days.”

17      3.33 On at least January 21, 23, and 26, 2015, Mr. Hall requested, through Mr.  
18 Root, that he be re-employed with L-3.

1       3.34 On January 26, 2015, Mr. Root rejected Mr. Hall's request for  
2 reemployment saying that he was "not able to get" Mr. Hall's "tour approved."

3       3.35 As of January 26, 2015, however, at least three L-3 pilot openings existed  
4 for which Mr. Hall was qualified.

5       3.36 In about January 2015, L-3 VERTEX and L-3/CIS sent 2014 W-2 Tax  
6 Forms to Mr. Hall at his Spokane, WA area residence.

7       3.37 In early February 2015, Justin Bridges-Crawford, one of Mr. Hall's L-3 S4  
8 co-worker pilots, asked Mr. Campbell why Mr. Hall was not at work.  
9

10      3.38 Mr. Bridges-Crawford asked that question because the S4 Program was  
11 short on personnel and working additional hours.

12      3.39 For example, S4 pilot Greg Lufker had been sent home for unspecified  
13 reasons, S4 pilot Mike Day quit, and the S4 Program's hours were increased due  
14 to another L3 program's in-country requirements in Afghanistan.  
15

16      3.40 Mr. Bridges-Crawford, in Mr. Campbell's office, said words to the effect of  
17 "why don't we bring Mitch out here." In response, Mr. Campbell stated "Mitch is  
18 all about Mitch . . . because Mitch went on military orders when we needed him  
19 around for the holidays." Mr. Bridges-Crawford informed Mr. Campbell that Mr.  
20 Hall lost money because of his holiday military duty and informed Mr. Campbell  
21 that "Mitch is ready to come to Afghanistan" because he is "off military orders."  
22

1       3.41 Mr. Campbell replied “just because Mitch gets off orders doesn’t mean he  
2 can come back to work here just because he wants to.”

3       3.42 As of February 12, 2015, L-3’s web site reflected that there were at least  
4 three L-3 pilot openings for work in Afghanistan.

5       3.43 In March 2015, L-3 required Mr. Hall to obtain a travel visa for  
6 Afghanistan for his employment. L-3 directed Mr. Hall to obtain the travel visa,  
7 delivered required documents for the visa to Mr. Hall in Washington State, and  
8 paid him for that work he performed in Washington State.  
9

10      3.44 Mr. Hall continued to request re-employment with L-3, and, during that  
11 process Mr. Hall gave L-3 notice of additional upcoming military obligations,  
12 including through the following e-mail:

13  
14      **From:** mitch hall [mailto:[jmitchhall@gmail.com](mailto:jmitchhall@gmail.com)]  
15      **Sent:** Wednesday, April 29, 2015 8:28 PM  
16      **To:** Holland, Kathy @ AS - C3ISR  
17      **Cc:** Root, Chris @ AS - C3ISR  
18      **Subject:** my revised rotations

19  
20      Hi Kathy,

21  
22      I had a couple of questions regarding my upcoming rotations. It  
23 looks like both of my next two R&R's are short by 9 and 11  
24 days. Since I require 60 days at home to maintain my currencies  
25 with the ANG, shorting those R&R's makes it very difficult to  
keep up with my obligations here. I don't mind extending for you  
anytime you need but I really do need to have a full 60 when I'm  
home.

1           Thanks for your understanding.  
2  
3           Mitch

4       3.45 In response to Mr. Hall's email, Mr. Root replied:

5           **From:** <[Chris.Root@l-3com.com](mailto:Chris.Root@l-3com.com)>  
6           **Date:** April 30, 2015 at 8:09:23 AM PDT  
7           **To:** <[jmitchhall@gmail.com](mailto:jmitchhall@gmail.com)>, <[Kathy.Holland@l-3com.com](mailto:Kathy.Holland@l-3com.com)>  
8           **Cc:** <[David.Akers@l-3com.com](mailto:David.Akers@l-3com.com)>  
9           **Subject: RE: my revised rotations**

10          Hi Mitch,

11          We will do our best to help you schedule your guard unit  
12          responsibilities but there are company scheduling goals as well.  
13          We do see ourselves as your primary employer. We have a legal  
14          obligation and a corporate policy to adjust our schedules based on  
15          the Military Orders you receive but not every convenient unit  
16          activity available. We also have a Program Policy to rotate the  
17          employees that work the Christmas holiday each year. In order to  
18          accomplish that goal, we do have to adjust the 60/60 rotations up  
19          to 10 days each rotation, as I tell every applicant in the telephone  
20          interview. If we adjust your schedule out for straight 60 day R and  
21          R's you would be stuck in a schedule that locks you in to working  
22          Christmas every year, which is not our goal. At this point, we will  
23          not be adjusting your current schedule based on Military  
24          responsibilities without receiving orders from the Government.

25          Thanks for your understanding,

20          Chris Root  
21          Chief Pilot – S4  
22          L3 Communications  
23          C<sup>3</sup> ISR Services  
24          Chris.root@l-3com.com  
25          O: (469) 698-8206  
             M: (903) 217-9572

1       3.46 To take military leave and preserve his right to reemployment after his  
2 military leave under USERRA, Mr. Hall was only required to provide simple oral  
3 or written notice of his military obligations, and that notice “may be informal and  
4 does not need to follow any particular format.” 20 C.F.R. §1002.85(c). Thus,  
5 L-3’s refusal to accommodate Mr. Hall’s schedule without Mr. Hall providing L-3  
6 with formal military orders violates USERRA.  
7

8       3.47 Although L-3 professes to afford pilots a 10 days per year “differential pay”  
9 bonus (which covers the difference between a service-member’s lower paying  
10 military job and his or her higher paying L-3 job), L-3 has not paid that benefit to  
11 Mr. Hall.  
12

13       3.48 Upon information and belief, the U.S. Government (as is standard practice  
14 with certain Department of Defense contracts) reimburses and/or funds L-3 the 10  
15 days per year “differential pay.” Or, put differently, L-3 does not pay its military  
16 reserve employees the 10 day per year differential bonus of its own resources, and  
17 instead the American taxpayer does.  
18

19       3.49 L-3 did not employ Mr. Hall for the February – April 2015 rotation, even  
20 though work was available to work throughout that period of time.  
21

22       3.50 L-3 did re-employ Mr. Hall on or about May 12, 2015.  
23

1       3.51 L-3's re-employment of Mr. Hall in May 2015 does not cure its February  
2       2015 USERRA violation, as prompt reemployment requires an employer to  
3       reemploy a servicemember within two weeks of his request for reemployment. 20  
4       C.F.R. § 1002.181.

5       3.52 Had Mr. Hall not been called to military duty, he would have been  
6       promoted to a "Safety Officer" position, which, in turn, would have increased Mr.  
7       Hall's monthly pay by approximately \$60.00 per day.

8       3.53 Randall Gladney, the S-4 Program Site Lead, told Mr. Hall in the early-July  
9       2015 timeframe that Mr. Hall did not receive a promotion for the Safety Officer  
10      promotion because Mr. Hall was "not reliable" given that Mr. Hall was gone too  
11      much because of his military obligations.

12      3.54 Throughout his employment, L-3 paid or reimbursed Mr. Hall for mileage,  
13      travel and plane tickets for Mr. Hall to travel from his residence in Washington to  
14      locations where he was needed for work at L-3.

15      3.55 In August, L-3 required Mr. Hall to obtain a U.S. Government Contractors  
16      Identification card for his employment. L-3 directed Mr. Hall to obtain the  
17      identification card at the nearest Real-Time Automated Personnel Identification  
18      System (RAPIDS) site, Fairchild Air Force Base, Washington, and L-3 paid him  
19      for that work he performed in Washington State.

1 3.56 On August 31, 2015, after L-3 was given notice of this pending lawsuit,  
2 Dennis Dickerson, Director, C3 ISR Services, L-3 Communications, contacted  
3 Mr. Hall's commanding officer at Fairchild Air Force Base to "confirm" Mr.  
4 Hall's active duty and leave request. This is the first time L-3 has questioned Mr.  
5 Hall's military obligations through his command.  
6

(Nathan Kay)

8       3.57 On or about October 3, 2014 Mr. Kay (while in the State of Washington)  
9  
applied, online, for employment with L-3 as a “Basic Pilot.”

11 3.58 During that timeframe Benjamin Jones, a pilot in Mr. Kay (and Mr. Hall's)  
12 Air National Guard unit also applied for employment with L-3 as a pilot.

3.59 At the time of their applications, neither Kay nor Jones had been previously  
been employed by any of the Defendants or an entity controlled or related to any  
of the Defendants.

17 3.60 On his online application, Mr. Kay, who exceeded the minimum  
18 qualifications for the job, noted that he was currently a member of the Washington  
19 Air National Guard

21    3.61 Upon information and belief, Mr. Jones also exceeded the minimum  
22 qualifications for the L-3 pilot job for which he applied.

3.62 On December 22, 2014, Mr. Hall (who is in the same Air National Guard unit as Nate Kay) asked Mr. Root whether he (Root) had reviewed Nate Kay's resume.

3.63 Upon information and belief, both Mr. Campbell and Ms. Holland considered Mr. Kay's employment application but rejected it, in part, because of Mr. Kay's reserve military status.

3.64 As of January 13, 2015, at least nine pilot openings existed at L-3, all of which Mr. Kay and Mr. Jones were qualified to fill.

3.65 As of February 17, 2015, the Basic Pilot position remained open.

### 3.66 L-3 never employed Mr. Kay.

3.67 L-3 never employed Mr. Jones.

3.68 There have been approximately 15,000 applicants for pilot positions with L-3 since 2011.

3.69 There were hundreds of applicants for the positions that Hall and Kay applied for in 2013 and 2014.

3.70 During the same period of time, more than 10 other individuals who applied to work as pilots at L-3 identified their current status in the National Guard or reserve in their application materials but were rejected or not hired by L-3.

1       3.71 A sample of approximately 200 applications for pilot positions at L-3,  
2 produced by Defendants in this litigation, shows that pilot applicants who *at the*  
3 *time of their applications* were current or active National Guard or reserve  
4 members and were not already employed by L-3 or employed by a contract or  
5 company being absorbed, acquired, or taken over by L-3 or a L-3 related entity  
6 (“non-lateral applicants”) had a substantially lower chance of obtaining  
7 employment as a pilot at L-3 compared to other pilot applicants in the same group  
8 of applicants. In the pool of approximately 200 applicants who applied for 31  
9 positions, L-3 hired thirty one (31) pilots. At least 25 of the non-lateral 205  
10 applicants (about one out of eight) were current or active National Guard or  
11 reserve members at the time of their applications. Of the non-lateral applicants  
12 who were hired, only two applicants identified in their applications that they had  
13 current or active reserve or National Guard obligations.  
14  
15

16       3.72 Within the sample of approximately 200 applicants produced by  
17 Defendants, the total number of current or active National Guard or reserve  
18 members who were rejected or not hired for a pilot position at L-3 is at least 30.  
19  
20

21       3.73 In the same sample of approximately 200 applicants, the rate at which L-3  
22 hired non-lateral pilot applicants who at the time of their applications were current  
23  
24

1 or active National Guard or reserve members is significantly lower than the rate at  
2 which L-3 hired other non-lateral pilot applicants.

3 3.74 Upon information and belief, Defendants have a pattern, policy, or practice  
4 of preferring to hire non-lateral pilot applicants who *are not* current or active  
5 National Guard or Reserve members over non-lateral pilot applicants who *are*  
6 current or active National Guard or Reserve members.  
7

8 3.75 Upon information and belief, the rate at which Defendants have hired non-  
9 lateral pilot applicants who *are not* current or active National Guard or Reserve  
10 members at the time of their applications is significantly higher than the rate at  
11 which Defendants have hired non-lateral pilot applicants who *are* current or active  
12 National Guard or Reserve members.  
13

14 3.76 Upon information and belief, other pilots who applied to L-3's MARSS  
15 program were denied an employment interview and employment due to their  
16 military service or status once L-3 learned that those applicants were current or  
17 active National Guard or Reserve members.  
18

19 3.77 Upon information and belief, other pilots who applied to L-3's S4 program  
20 were denied an employment interview and employment due to their military  
21 service or status once L-3 learned that those applicants were current or active  
22 National Guard or Reserve members. For example, upon information and belief, a  
23

1 former L-3 S4 Program pilot who worked for L3 in the 2012-2015 timeframe  
2 (“former pilot”) recommended that L-3 hire another individual who was a member  
3 of the Air National Guard; the former pilot informed, or caused to be informed, L-  
4 3’s management that the Air National Guard member was a reservist who was  
5 looking for work as a sensor operator; the Air National Guard member met the  
6 minimum qualifications for the sensor operator position for which he applied; and  
7 he applied for work with L-3, but was not afforded an interview by L-3.  
8

9 3.78 During the November 2014 timeframe, the same former pilot telephoned  
10 Kathy Holland, L-3 S4 Program’s “Chief Scheduler,” about an upcoming rotation,  
11 and during that telephone call Ms. Holland expressed anger that military reservists  
12 were causing scheduling difficulties for L-3.  
13

14 3.79 Although required by federal law, 38 U.S.C. § 4334, L-3 does not maintain  
15 (at the appropriate workplaces) the federally-mandated poster that informs  
16 employees of their rights and employers of their obligations under USERRA.  
17

18 3.80 At all times relevant hereto, L-3 had a duty to conduct itself in compliance  
19 with the law, including USERRA, and ensure that its agents followed USERRA.  
20 The above actions by L-3 and its agents violated those duties and caused Plaintiffs  
21 to suffer damages.  
22

#### IV. CLASS ACTION ALLEGATIONS

4.1 Plaintiffs re-alleges the above paragraphs.

4.2 Plaintiff Nathan Kay brings this action pursuant to Federal Rules of Civil  
Procedure 23(a) and (b)(3), on behalf of the following persons:

##### **National Class (“Class” or “National Class”)**

All persons who applied to work as pilots at L-3 since January 1, 2011, who

(1) at the time of his or her application was an active or current  
member of the National Guard or Reserve; and

(2) at the time of his or her application was not employed by any of  
the Defendants or employed by a contract or company being  
absorbed, acquired, or taken over by the Defendants (a non-lateral  
applicant); and

(3) was not hired for one or more position(s) as a pilot due to his or  
her status or service in the National Guard or Reserve.

##### **Washington State Subclass:**

All persons who, while residing or working in the State of Washington,  
applied to work as pilots at L-3 since January 1, 2011, who

(1) at the time of his or her application was an active or current  
member of the National Guard or Reserve; and

(2) at the time of his or her application was not employed by any of the Defendants or employed by a contract or company being absorbed, acquired, or taken over by the Defendants (a non-lateral applicant); and

(3) was not hired for one or more position(s) as a pilot due to his or her status or service in the National Guard or Reserve.

Excluded from the National Class and the Washington Subclass are all former or current pilots who previously reached settlements with or judgments against Defendants in their individual USERRA and/or WLAD actions regarding the practices challenged in this action.

## **Impracticability of Joinder**

4.3 The class is so numerous that joinder of all members is impracticable. The exact size of the class is not known. Upon information and belief, the class consists of over 100 persons and may include hundreds of persons.

4.4 Upon information and belief, the members of the Proposed Class, who applied for employment with L-3, are geographically dispersed throughout the United States.

1           **Commonality**

2       4.5 Upon information and belief, the class members were subjected to and  
3       injured by the same pattern, practice or policy of L-3 preferring to hire non-lateral  
4       pilot applicants who *are not* current or active National Guard or Reserve members  
5       over non-lateral pilot applicants who *are* current or active National Guard or  
6       Reserve members (“the challenged practice’). There are numerous questions of  
7       law or fact that are common to the class members, including the following:

- 8
- 9           i.      Whether L-3 engaged in the challenged practice;
- 10
- 11          ii.     Whether the challenged practice violates USERRA, 38 U.S.C. §  
12                   4311;
- 13
- 14          iii.    What types of compensation and benefits the class members were  
15                   denied due to the challenged practice?
- 16
- 17          iv.     Whether, in engaging in the challenged practice, L-3 either knew or  
18                   showed reckless disregard for whether its conduct was prohibited by  
19                   USERRA such that the class members are entitled to receive  
20                   liquidated damages under USERRA. 38 U.S.C. § 4323(d) and 20  
21                   C.F.R. § 1002.312(c).

1           **Typicality**

2       4.6   The claims of the Named Plaintiff Kay are typical of the claims of the  
3 Plaintiff class he seeks to represent. The claims of Named Plaintiff Kay arise  
4 from the same challenged practice and rely upon the same legal theory that the  
5 challenged practice violates USERRA, 38 U.S.C. § 4311(a) & (b).

6  
7           **Adequacy of Representation**

8       4.7   Named Plaintiff Kay will adequately represent the members of the Class,  
9 does not have any conflicts with the other class members, and is represented by  
10 experienced counsel who have substantial experience in USERRA and  
11 employment class action litigation and who will vigorously prosecute the action  
12 on behalf of the class.

13  
14           **Rule 23(b)(3)**

15  
16       4.8   This action is properly maintainable as a class action under Rule 23(b)(3) of  
17 the Federal Rules of Civil Procedure.

18  
19       4.9   The questions of law and fact common to the members of the class  
20 predominate over questions affecting individual class members, and a class action  
21 is superior to other available methods for the fair and efficient resolution of this  
22 controversy.

1       4.10 By resolving the common issues described above in a single class  
2 proceeding, each member of the proposed class will receive a determination of  
3 whether L-3 engaged in a pattern, practice or policy of preferring to hire non-  
4 lateral pilot applicants who *are not* current or active National Guard or Reserve  
5 members over non-lateral pilot applicants who *are* current or active National  
6 Guard or Reserve members, and whether that challenged practice violates  
7 USERRA.

8  
9       4.11 Members of the proposed class do not have a significant interest in  
10 individually controlling the prosecution of separate actions.

11  
12      4.12 No litigation concerning the challenged practice has been commenced by  
13 any member of the class other than the Named Plaintiffs.

14  
15      4.13 Concentration of the litigation in this forum is desirable, as this action  
16 challenges a company-wide practice and it will benefit the class members and L-3  
17 to have all of the class members' claims adjudicated in a single proceeding.

18  
19      4.14 This class action can be managed without undue difficulty because the  
20 issues presented are common to the class.

## **V. CAUSES OF ACTION**

**COUNT I: VIOLATION OF USERRA, 38 U.S.C. § 4311**  
**(All Plaintiffs against Defendants for Discrimination in Initial Employment)**

5.1 Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 4.14 as if fully set forth herein.

5.2 Plaintiffs bring this claim on their own behalf and Plaintiff Kay brings this claim on behalf of all members of the Proposed Class.

5.3 Under USERRA, “[a] person who is a member of . . . has performed . . . or has an obligation to perform service in a uniformed service shall not be denied initial employment . . . or any benefit of employment by an employer on the basis of that membership, . . . performance of service, . . . or obligation.” 38 U.S.C. § 4311(a). “An employer shall be considered to have engaged in” such actions “if the person’s membership, . . . service, . . . or obligation for service in the uniformed services is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such membership, . . . service, . . . or obligation for service.” *Id.* § 4311(c).

5.4 Under USERRA, service in the National Guard or a Reserve component of the Armed Forces constitutes “service in the uniformed services.” 38 U.S.C. § 4303(13), (16), and is protected by the Act.

1       5.5 Upon information and belief, by engaging in a pattern, practice or policy of  
2 preferring to hire non-lateral pilot applicants who *are not* current or active  
3 National Guard or Reserve members over non-lateral pilot applicants who *are*  
4 current or active National Guard or Reserve members, L-3 violated USERRA by  
5 denying (or in the case of Plaintiff Hall, delaying) “initial employment” and  
6 “benefit[s] of employment” on the basis of such National Guard or reserve  
7 members’ “membership,” “performance of service” and/or “obligation to perform  
8 service in a uniformed service,” 38 U.S.C. § 4311(a), and in particular by making  
9 such reservists’ “membership” “service,” and/or “obligation for service in the  
10 uniformed services” “a motivating factor in” Defendants’ denial of or delaying  
11 initial employment. 38 U.S.C. § 4311(c).

12       5.6 Upon information and belief, L-3 would not have denied initial employment  
13 to non-lateral reservists “in the absence of [their] membership . . . service, . . . or  
14 obligation for service” in the uniformed services. 38 U.S.C. § 4311(c).

15       5.7 L-3 violated USERRA § 4311(a) by using Mr. Kay’s status and service in  
16 the Air National Guard as a motivating factor in deciding to deny him initial  
17 employment and by using Mr. Hall’s status and service in the Air National Guard  
18 as a motivating factor in deciding to delay his initial employment.

5.8 At all relevant times hereto, L-3 maintained contracts with the United States Government that required L-3 to follow the requirements and provisions of USERRA, including 38 U.S.C. §§ 4311, 4312, 4313, and 4316.

5.9 The L-3 Managers and Directors who had responsibility over the employment decisions at L-3 during the time frame alleged in this Complaint had access to the requirements imposed upon employers under the USERRA, including, but not limited to, posted USERRA workplace notices and L-3's applicable employment policies or procedures.

5.10 The persons charged with employment-related decisions at L-3 during the time frame alleged in this Complaint were familiar with the requirements imposed upon employers under USERRA.

5.11 Defendants either knew or showed reckless disregard for whether their conduct was prohibited by USERRA, and their conduct was willful, as defined by 38 U.S.C. § 4323(d)(1)(C), 20 C.F.R. § 1002.312(c), as Defendants were given notice that their intended actions violated the law and Defendants carried out such unlawful conduct with knowledge and responsibility that their actions were not in compliance with USERRA. As such, liquidated damages are available and warranted under 38 U.S.C. § 4323(d)(1)(C).

1                   **COUNT II: VIOLATION OF THE WASHINGTON LAW AGAINST  
2                   DISCRIMINATION, RCW 49.60.180(1), (3)**  
3                   **(Plaintiff Kay and All Members of the Washington Subclass  
Against Defendants for Discrimination in Hiring)**

4       5.12 Plaintiff Kay repeats and re-alleges the allegations set forth in paragraphs 1  
5 through 5.11 as if fully set forth herein.

6       5.13 The Washington Law Against Discrimination (“WLAD”) makes it “for any  
7 employer” “[t]o refuse to hire any person because of . . . honorably discharged  
8 veteran or military status,” RCW 49.60.180(1), or “[t]o discriminate against any  
9 person in compensation or any other terms or conditions of employment because  
10 of . . . honorably discharged veteran or military status[.]” RCW 49.60.180(3).  
11 Under the WLAD, an “honorably discharged veteran or military status” includes  
12 “a person who is” “[a]n active or reserve member in any branch of the armed  
13 forces of the United States, including the national guard, coast guard, and armed  
14 forces reserves.” RCW 49.60.040(15).

15      5.14 Upon information and belief, by engaging in a pattern, practice or policy of  
16 preferring to hire non-lateral pilot applicants who *are not* current or active  
17 National Guard or Reserve members over non-lateral pilot applicants who *are*  
18 current or active National Guard or Reserve members and/or denying employment  
19 to non-lateral pilot applicants who are current or active National Guard or Reserve  
20

members, L-3 violated the WLAD with respect to Mr. Kay and members of the proposed Washington State Subclass by refusing to hire or otherwise discriminating against such National Guard or Reserve members based because of their “honorably discharged veteran or military status.” RCW 49.60.180(1), (3). The honorably discharged veteran or military status of the members of the Washington Subclass was a substantial factor in Defendants’ refusing to hire, or otherwise discriminating against Plaintiff Kay and the members of the Washington Subclass.

5.15 Mr. Kay’s honorably discharged veteran or military status was, as described above, a substantial factor in Defendants’ decision to deny him employment.

**COUNT III: VIOLATION OF USERRA,  
38 U.S.C. §§ 4312, 4313, 4316  
(Plaintiff Hall against Defendants for Failure to Reemploy Him)**

5.16 Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 5.15 as if fully set forth herein.

5.17 Under USERRA, “any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of [USERRA],” if the person “has given advance written or verbal notice of such service to such person’s employer,” the “cumulative length of the absence and of

1 all previous absences from a position of employment with that employer by reason  
2 of service in the uniformed services does not exceed five years,” and the “person  
3 reports to, or submits an application for reemployment to, such employer[.]” 38  
4 U.S.C. § 4312(a).  
5

6 5.18 Under USERRA, if a person is entitled to reemployment under § 4312, the  
7 person must be reemployed “in the position of employment in which the person  
8 would have been employed if the continuous employment of such person with the  
9 employer had not been interrupted by such service,” or “a position of like  
10 seniority, status and pay[.]” 38 U.S.C. §§ 4313(a)(1)(A), (a)(2)(A).

12 5.19 Under USERRA, a person who is entitled to reemployment “is entitled to  
13 the seniority and other rights and benefits determined by seniority that the person  
14 had on the date of the commencement of service in the uniformed services plus  
15 the additional seniority and rights and benefits that such person would have  
16 attained if the person had remained continuously employed.” 38 U.S.C. §  
17 4316(a).  
18

20 5.20 Mr. Hall was entitled to reemployment under § 4312, but he was denied  
21 reemployment under § 4312, a reemployment position under § 4313(a), and the  
22 rights and benefits associated with a reemployment position under § 4316(a).

23 5.21 Mr. Hall gave L-3 notice of his military obligations in October 2014.  
24

1 5.22 Mr. Hall's cumulative length of uniformed service during his employment  
2 at L-3 (December 6, 2014 to January 31, 2015) did not exceed five years.

3 5.23 Mr. Hall served honorably during the above timeframe.

4 5.24 Mr. Hall gave L-3 notice of his intent to return to work on, among other  
5 days, December 22, 2014, January 2, 15, 21, 23 and 26, 2015.

6 5.25 Upon Mr. Hall's satisfying of USERRA's re-employment criteria L-3 was  
7 required to re-employ Mr. Hall in either his (a) pre-deployment position (b) a  
8 position similar the pre-service position in like seniority, status, and pay, or (c) the  
9 next closet position. 38 U.S.C. § 4313(a).

10 5.26 By failing to promptly re-employ Mr. Hall in February 2015, L-3 violated  
11 USERRA's re-employment provisions, including 38 U.S.C. §§ 4312, 4313, and  
12 4316.

13 5.27 USERRA requires a servicemember to be reemployed "as soon as  
14 practicable under the circumstances" and ordinarily "reemployment must occur  
15 within two weeks of the employee's application for reemployment. 20 C.F.R. §  
16 1002.181.

17 5.28 Defendants violated 38 U.S.C. § 4316, among other ways, by denying Mr.  
18 Hall the seniority and-non seniority benefits provided by Defendants to his non-  
19 military peers, such as, without limitation, prompt reemployment that Defendants  
20

1 provided to individuals who take family or medical leave pursuant to the Family  
2 Medical Leave Act.

3 5.29 As described above, Defendants' violations of USERRA were willful.  
4 With respect to Plaintiff Hall's reemployment claim under 38 U.S.C. §§ 4312,  
5 4313, and 4316, Defendants knew their obligations to reemploy Plaintiff Hall  
6 under §§ 4312, 4313, and 4316, yet acted with knowledge or reckless disregard  
7 for whether their conduct was prohibited by USERRA §§ 4312, 4313, and 4316.  
8  
9

10 **COUNT IV: VIOLATION OF USERRA, 38 U.S.C. § 4318**  
11 **(Plaintiff Hall against Defendants)**

12 5.30 Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1  
13 through 5.29 as if fully set forth herein.  
14

15 5.31 USERRA § 4318 sets forth "the right to pension benefits of a person  
16 reemployed" under USERRA. 38 U.S.C. § 4318(a)(1)(A). Returning veterans  
17 must be treated "as not having incurred a break in service with the employer [] by  
18 reason of such person's period or periods of service in the uniformed services[,"]  
19 *id.* §4318(a)(2)(A), making an employer "liable to an employee pension benefit  
20 plan for funding any obligation of the plan to provide the benefits" for a veteran's  
21 period of military service. *Id.* § 4318(b)(1). An employer must make its  
22 "employer contribution for the person in the same manner and to the same extent  
23  
24 THIRD AMENDED COMPLAINT - 36

1 the allocation occurs for other employees during the period of service.” *Id.* §  
2 4318(b)(2). When an employer’s pension contribution is contingent upon an  
3 employee making his or her own contribution to a pension plan (*i.e.*, a matching  
4 contribution), the employer must make the contribution when the employee makes  
5 his or her own contribution, and thus must allow the employee to make such a  
6 contribution. 38 U.S.C. § 4318(b)(2).

7  
8 5.32 Under Defendants’ pension plan, Defendants were required to match up to  
9 3% of Hall’s earnings, so long as Hall made contributions of up to 3% of his  
10 earnings.  
11

12 5.33 Defendants violated 38 U.S.C. § 4318, among other ways, by denying Mr.  
13 Hall the right to make contributions to his pension plan for the period of his  
14 military service, and by failing to give timely and adequate notice to the plan  
15 administrator, as required by USERRA.  
16

17 5.34 Department of Labor regulations require make-up contributions under  
18 USERRA to be made within 90 days after reemployment. 20 C.F.R.  
19 §1002.262(a).  
20

21 5.35 As described above, Defendants’ violations of USERRA were willful.  
22 With respect to Plaintiff Hall’s USERRA pension claim under § 4318, Defendants  
23 knew their obligations to inform Plaintiff Hall of his right to make pension  
24

1 contributions for the period of his military service, to match any contribution of  
2 Plaintiff Hall, and inform the pension plan administrator about Plaintiff Hall's  
3 USERRA rights, yet Defendants acted with knowledge or reckless disregard for  
4 whether their conduct was prohibited by USERRA § 4318.  
5

## 6 VI. PRAYER FOR RELIEF

7 6.1 Plaintiffs respectfully ask this Court to grant them the following relief:

- 8 a. Declare that Defendants' actions violated USERRA and the WLAD, and  
9 permanently enjoin Defendants from engaging in such violations.
- 10 b. Certify this action as a class action under Fed. R. Civ. P. 23(a) and (b)(3).
- 11 c. Designate Named Plaintiff Kay as a Class Representative pursuant to Fed.  
12 R. Civ. P. 23(c).
- 13 d. Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(c)  
14 & (g).
- 15 e. Award the Members of the National Class both economic damages in the  
16 amount to be proven at trial, and award the Members of the Washington  
17 State Subclass economic and non-economic damages available under  
18 Washington State law, including lost wages, back pay, front pay, lost  
19 benefits of employment, negative tax consequences of any award,  
20  
21  
22  
23  
24

1 liquidated damages, exemplary damages, prejudgment interest, and punitive  
2 damages, as provided by law.

- 3 f. Award reasonable attorneys' fees, litigation expenses, and costs, pursuant to  
4 38 U.S.C. § 4323(h), and as otherwise provided by law.  
5  
6 g. Award any and all appropriate equitable relief, including reinstatement and  
7 recoupment of any loss of wages or benefits. 38 U.S.C. § 4323(d)(1)(A)(B).  
8  
9 h. Declare that Defendants' violations of USERRA were unlawful and  
10 violated USERRA, 38 U.S.C. §§ 4311, 4312, 4313, 4316.  
11  
12 i. Declare that Defendants' violations of USERRA were willful pursuant  
13 to 38 U.S.C. § 4323(d)(1)(C).  
14  
15 j. Order such other relief as may be just and proper.

16 March 15, 2017 Respectfully submitted,

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